

# **TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**Minutes**  
**January 26, 2006**  
**9:30 a.m.**

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The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, January 26, 2006 in Nashville, Tennessee at 9:30 a.m. Chairman John Jones, Commissioners Cynthia Bond and Harlan Mathews were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Mark Hutchens and ASAC Andy Woodall from the staff were present.

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- 1. The Minutes for December 15, 2005 Commission Meeting were approved.**
- 2. OLD BUSINESS**

## **HUGH McSHARRY: NASHVILLE WINE EXCHANGE (“NWE”)**

During the December, 2005 Commission meeting, Hugh McSharry and his attorney Sam McAllester, presented to the Commission a business plan that would create a climate controlled storage facility for fine wine. He proposed that the business would implement the software that would monitor the client’s inventory in storage. His business would obtain the alcohol after the client has purchased the alcohol—either by meeting the client at the retail store and taking the product to the storage facility or by having the client deliver the alcohol directly to the storage facility. NWE would deliver the product to the client at the client’s demand either to the client’s home or to another legal location.

Several concerns were expressed regarding the business. These concerns included the following:

- a. The pick-up and delivery of alcohol;
- b. The possibility that out-of-state/untaxed alcohol could enter the state, and that this business may provide a convenience for this to occur; and
- c. That NWE would be an unlicensed entity, and the TABC would not have access to the premises or to the records;

NWE desires to address these concerns.

## **Discussion/Action Taken:**

Mr. William Cheek, III, attorney, and Hugh McSharry, were present at the meeting and presented the following business plan to the Commission. Mr. Cheek, reiterated Mr. Sam McAllester’s remarks from the December, 2005, Commission meeting regarding Nashville Wine Exchange (“NWE”).

Mr. Cheek stated that the business will employ a web-base tracking reporting software that will allow customers to sort their wines by variety of the grape, region grown in, age and any different manner. It will also allow the customer to look at their wines from various perspectives. NWE would track the wines and verify customers are not exchanging wines.

Mr. Cheek stated the proposal is a post consumer purchase delivery. NWE, at an additional cost, proposes to meet the customer at the liquor store after the customer has purchased the wine and NWE would take the wine back to the wine storage facility. If a customer requests to have the wine delivered to their house, then NWE would deliver the wine to the customer's house. The customer could also pick up the wine at NWE.

Mr. Cheek stated that he realizes that direct shipment of wine in Tennessee is illegal. Mr. Cheek indicated NWE would abide by that quantity limit set by liquor transportation statutes. Mr. Cheek stated that Mr. McSharry has not proposed to purchase the wine for customers. He will in no way, affect the three-tier system. Mr. Cheek stated that NWE will not accept delivery from UPS or FedEx or any other carrier.

Henry Hildebrand, III, attorney for Tennessee Wholesalers, suggested that a hearing for a declaratory order be scheduled according to the Administrative Procedures Act.

Chairman Jones made a motion to have the staff to prepare a formal recommendation, by the February Commission meeting, or at least give a report on the status. Parties should proceed with due diligence. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**3. RETAIL PACKAGE STORES:**

**A. 1. E-Z LIQUOR STORE  
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

**Licensee/Seller: Rex & Kathy Henry**  
**Applicant/Buyer: Robert McKenzie**

Before the Commission is a request for a transfer of ownership of the retail package store to be located at 5012 North Highway 58 in Chattanooga, Tennessee. Mr. McKenzie intends to initially invest approximately \$325,000. Financing is based upon a loan in the amount of \$100,000 from Cornerstone Community Bank and the remainder financed promissory note held by the current owners. All documentation has been submitted with the exception of the following:

- a. Actual lease to Robert McKenzie

**Discussion/Action Taken:**

Director Elks reviewed the application for the Commissioners. Director Elks recommended approval upon submission of the lease to Robert McKenzie. Chairman Jones made a motion to approve upon submission of the lease to Robert McKenzie. Commissioner Bond seconded the motion, and it was approved with 3 ayes.

**2. GATEWAY PACKAGE  
GATLINBURG, TENNESSEE (SEVIER COUNTY)**

<b>Licensee/Seller:</b>	<b>Gateway Package Store, Inc.</b>
<b>Stockholder:</b>	<b>Estate of John Richard Rader</b>
<b>Applicant:</b>	<b>Gateway Package Store, Inc.</b>
<b>Stockholders:</b>	<b>Holly Rader, Ginger Rader Earhart, and Carrie Rader</b>

On May 23, 2004, the sole stockholder of Gateway Package Store, Inc. (John Richard Rader) passed away. The business continued to operate under the corporate name with the sole stockholder being the estate. Pursuant to his will, each of his daughters has inherited a one-third interest in the business. All documentation has been submitted and is in order.

**Discussion/Action Taken:**

Director Elks reviewed the application for the Commissioners. Director Elks recommended approval. Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion, and it passed with 3 ayes.

**3. MILLINGTON LIQUOR STORE  
MILLINGTON, TENNESSEE (SHELBY COUNTY)**

<b>Licensee/Seller:</b>	<b>F.P. Sadlon</b>
<b>Applicant/Buyer:</b>	<b>Bharatbhai P. Patel</b>

Before the Commission is a request for a transfer of ownership of the retail package store to be located at 5073 Navy Road in Millington, Tennessee. Mr. Patel intends to purchase the business for \$500,000—including inventory. Mr. Patel indicates that financing is based upon existing personal funds of \$100,000 and the

balance will be owner financed. All documentation has been submitted with the exception of the following:

- a. TABC Inspection; and
- b. Copy of Promissory Note.

**Discussion/Action Taken:**

Mr. Bharatbhai P. Patel was present at the meeting. Director Elks reviewed the application for the Commissioners. Director Elks recommended approval upon submission of the TABC Inspection and a copy of the Promissory Note. Commissioner Bond made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion. The motion passed with 3 ayes.

**4. HICKORY HILL WINE & SPIRITS  
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

**Licensee/Seller: Mattie Orr**

Before the Commission is a request for a transfer of location of the package store currently located at 6326 Winchester #3, in Memphis, Tennessee. Ms. Orr is requesting to transfer the location of the store to 3633 Hickory Hill in Memphis, Tennessee. This request is predicated upon decreased sales and increased rent. All documentation has been submitted with the exception of the following:

- a. Acknowledgement from current landlord that Ms. Orr has been released from the lease; and
- b. Verification that product has not been transferred to the new location.

**Discussion/Action Taken:**

Director Elks reviewed the application for the Commissioners. Director Elks recommended approval upon submission of the above documentation.

Commissioner Bond made a motion to approve upon submission of the pending documentation. Commissioner Mathews seconded the motion and it was approved with 3 ayes.

**5. 109 WINES AND LIQUORS  
GALLATIN, TENNESSEE (SUMNER COUNTY)**

**Applicant: 109 Wines & Liquors, Inc.**  
**Stockholders: Donna Hudson**

Before the Commission is a request for a new retail package store to be located at 1326 South Water in Gallatin, Tennessee. Ms. Donna Hudson intends operate the business as a corporation and plans to initially invest approximately \$416,000 to operate the store. Financing is based upon a small business loan with Banco Popular to purchase the land, build the retail store, purchase inventory/equipment, and provide working capital. All documentation has been submitted with the exception of the following:

- a. Deed to property when obtain;
- b. TABC Inspection;
- c. Acknowledgement of the Rules/Regulations; and
- d. Use and Occupancy permit.

**Discussion/Action Taken:**

Mrs. Donna Hudson was present at the meeting. Director Elks reviewed the application for the Commissioners. Director Elks recommended approval upon submission of the following documents:

- a. Deed to property when obtain;
- b. TABC Inspection;
- c. Acknowledgement of the Rules/Regulations; and
- d. Use and Occupancy permit.

Commissioner Mathews made a motion to approve upon submission of the pending documents. Commissioner Bond seconded the motion. The motion passed with 3 ayes.

**6. SOUTH END LIQUORS  
ATOKA, TENNESSEE (TIPTON COUNTY)**

**Applicant: Christopher M. Joyner**

Before the Commission is a request for a new retail package store to be located at 15888 Highway 515 in Atoka, Tennessee. Mr. Joyner intends to operate the business as a sole proprietorship, and intends to initially invest approximately

\$150,000. Financing appears to be based upon a loan with InSouth Bank; however, the loan documents indicate that the loans were initiated in 2003 and 2004. All documentation has been submitted with the exception of the following:

- a. TABC Inspection; and
- b. An explanation regarding the financing for the business.

**Discussion/Action Taken:**

Director Elks reviewed the application for the Commissioners. Director Elks recommended approval upon submission of the TABC Inspection and the explanation regarding the financing for the business. Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**6. THE STILL LIQUOR STORE  
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

<b>Licensee/Seller:</b>	<b>The Still Liquor Store, LLC</b>
<b>Member:</b>	<b>Joe Accardi</b>
<b>Applicant/Buyer:</b>	<b>LRW Enterprises, LLC</b>
<b>Member:</b>	<b>Larry Walker</b>

Before the Commission is a request to transfer ownership of the business currently located at 4595 Millbranch Road in Memphis, Tennessee. Mr. Larry Walker intends to initially invest up to \$500,000. The purchase price of the business is \$275,000—including inventory. Financing is based upon a loan with First Tennessee Bank. All documentation has been submitted with the exception of the following:

- a. TABC Inspection; and
- b. Written verification that no business owned has a LBD license.

**Discussion/Action Taken:**

Director Elks reviewed the application for the Commissioners. Director Elks stated that the staff had received written verification that no business owned has a LBD license and recommended approval upon submission of the TABC Inspection. Commissioner Bond made a motion to approve upon submission of the TABC Inspection. Commissioner Mathews seconded the motion and it was approved with 3 ayes.

**4. CONTESTED CASES**

**THOMAS COGGINS:** On March 29, 2004, Mr. Coggins was convicted and sentenced for the felony, aggravated assault and kidnapping. T.C.A. §57-3-703(2) sets forth—among other things—that an applicant for an employee permit “has not been convicted of any felony within the previous five (5) years)”. Mr. Coggin’s application was denied on December 9, 2005, and he subsequently requested a hearing on the denial of his application.

**Discussion/Action Taken:**

Mr. Thomas Coggins was present at the meeting. Director Elks reviewed the application for the Commissioners. Director Elks stated that Mr. Thomas Coggins works at Bluegrass Beverages Retail Store. On March 29, 2004 Mr. Coggins was convicted of a felony of aggravated assault and kidnapping. He submitted an application for a retail employee permit card which is different from a LBD server permit. A server permit requires that an applicant cannot be convicted of a felony within the past four (4) years. The retail employee permit statutes states the applicant cannot be convicted of a felony within the past five (5) years. On December 9, 2005, Mr. Coggins’s application was denied based on his 2004 felony conviction. Mr. Coggins has appealed the denial.

Director Elks stated that the TABC has continued cases of denied server permit applications where the conviction was greater than four (4) years, but less than eight (8) years to see if the law could be changed. The scenario of Mr. Coggins conviction would not fall under this precedent. She stated that under the present law, he would not be able to obtain a retail employee permit until 2009.

Chairman Jones asked Director Elks if there was any chance of looking into the Retail employee permit laws with the Legislators. She stated that if the law was being changed for server permits, then the TABC should also have the discretion for both the server permits and employee permits. Chairman Jones stated to Mr. Coggins that the Commission wished they had the discretion to look at his record and documentation and grant the permit; however, the Commission was not in the position to do that.

Director Elks again stated that this situation is different than the areas where the server permit cards denials have been continued in the past. With the server permits, the denial of the permits when the convictions were between the four (4) year felony conviction and the eight (8) years have been continued. On the other hand, when individuals had been convicted of a felony within four (4) years of the date of the application, the staff continues to deny those applications. Further, many of the server permit applications have been renewals. With renewals, the server may continue to work under the APA statute until the Commission acts on

the denial. However, Mr. Coggins conviction is not between the five (5) and eight (8) year period, he is within the five (5) year period. Also Mr. Coggins has not had a retail employee permit card in the past and that is another distinction. Because Mr. Coggins does not have a current or expired permit, he would not be able to work at the establishment. Even if the Commission were to suspend the denial, the staff could not issue a permit for Mr. Coggins to work at the establishment. Distinctions exist between what the Commission has done with the server permits and this situation. She stated that if the Legislature does act, then Mr. Coggins would be able to reapply and come back before the Commission.

Chairman Jones made a motion to uphold the denial of the employee permit. Commissioner Mathews seconded the motion, and it passed with 3 ayes.

**5. PRIVATE CLUBS**

**EAGLES POST # 4096  
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

The Eagles Post # 4096 - Knoxville has requested a transfer of location from 8752 Asheville Highway, Knoxville, TN to 500 Andrew Johnson Highway, Strawberry Plains, TN 37871. The request is based on the fact that the Tennessee Department of Transportation purchased the property on which the club was located. All documentation has been submitted.

**Discussion/Action Taken:**

Assistant Director Smith reviewed the application for the Commissioners. Assistant Director Smith recommended approval. Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion, and it passed with 3 ayes.

- 6. SPECIAL OCCASION LICENSES**
- 7. CONSUMER EDUCATION SEMINAR LICENSES**
- 8. PERSONNEL**
- 9. BUDGET**
- 10. CONSENT ORDERS**
- 11. PENDING MATTERS LIST**



12. **MISCELLANEOUS.** – Chairman Jones stated that the Commission will stand in adjournment for the purpose of a presentation by the Tennessee Farm Wine Growers Association for the Commission at Beachhaven Winery in Clarksville. Chairman Jones invited the public as stated in the past. The Commission stood in adjournment until reassembling in Clarksville for that presentation and at the conclusion of the presentation will adjourn. Commissioner Mathews made a conditional motion to adjourn at the end of this presentation. Commissioner Bond seconded the motion and it was approved with 3 ayes.

Chairman Jones, Commissioner Mathews, Commissioner Bond, Assistant Director Carolyn Smith, CLEO Mark Hutchens and ASAC Andy Woodall were present at the meeting. Mr. Don Collier, Chairman of Tennessee Viticulture Advisory Board gave a presentation about the growth of wine sales nationwide. He further suggested that if the Legislature would increase the 20,000 gallon cap that wineries can produce, then the State of Tennessee could benefit with approximately \$10,000,000 in tax revenue.

13. **DATE OF NEXT MEETING** – February 16, 2006 at 9:30 a.m.

There being no further business the meeting was adjourned.

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Shari Danielle Elks  
Executive Director

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John A. Jones  
Chairman